



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable John R. Shook
Criminal District Attorney
San Antonio, Texas

Dear Sir:

Opinion No. O-1631

Re: Whether an instrument
which does nothing more
than reduce the interest
rate on a note secured
by deed of trust, is
subject to stamp tax

We are in receipt of your letter of October
25, 1939, wherein you request our opinion in response
to the following question:

"Is an instrument subject to the
note tax which is not a deed of trust
and which is not an extension of a
deed of trust, but merely reduces the
interest provided for in an obligation
secured by a deed of trust which deed
of trust was recorded before the en-
actment of Article 7047a?"

Article 7047a, Vernon's Annotated Civil Stat-
utes, as amended by the 46th Legislature, reads in part
as follows:

"(a) Except as herein otherwise
provided there is hereby levied and
assessed a tax of Ten (10¢) Cents on
each One Hundred (\$100.00) Dollars or
fraction thereof, over the first Two
Hundred (\$200.00) Dollars, on all notes
and obligations secured by chattel mort-
gage, deed of trust, mechanic's lien
contract, vendor's lien, conditional
sales contract and all instruments of

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a similar nature which are filed or recorded in the office of the County Clerk under the Registration Laws of this State; provided that no tax shall be levied on instruments securing an amount of Two Hundred (\$200.00) Dollars, or less. After the effective date of this Act, except as hereinafter provided, no such instrument shall be filed or recorded by any County Clerk in this State until there has been affixed to such instrument stamps in accordance with the provisions of this section; * * *

Statutes of this nature have not been before the courts frequently for construction, and no decision has ever been written concerning Article 7047e, either as originally enacted or as amended by the 46th Legislature.

The Texas statute differs in many respects from any other similar statute which we have had occasion to read. However, a careful reading of this enactment, we believe, makes the answer to your question plain. It is noted that no attempt is made to levy the stamp tax upon any kind of an instrument except one creating a lien of some nature. Specifically, a release is not required to be stamped. If the instrument does nothing more than reduce the interest rate upon an obligation secured by a deed of trust, then the same is more in the nature of a release than an instrument creating a lien. It does not fall within the statute, and your question is given a negative answer.

The affirmative answer given in our opinion No. 0-1485 to your second question had reference to a deed of trust, and not to an instrument doing nothing more than reduce the interest rate.

Yours very truly

APPROVED NOV 2, 1939

ATTORNEY GENERAL OF TEXAS

Glenn R. Lewis

ATTORNEY GENERAL OF TEXAS

By

Glenn R. Lewis

Glenn R. Lewis
Assistant

GRL:LW

